



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2007-07)
***SPOUSAL SUPPORT: PERMIT JUDICIAL CONSIDERATION OF
CHILD SUPPORT TERMINATION FOR MODIFICATION***

TO: Larry Doyle, Chief Legislative Counsel, State Bar Office of Governmental Affairs

FROM: Paul L. Brimberry

DATE: May 1, 2006

RE: Legislation to permit judicial consideration, as a change of circumstances warranting a request for modification of spousal support, the termination of the child support order by operation of law (Overturns *In re Marriage of Lautsbaugh* (1991) 72Cal.App.4th 1131, 85 Cal.Rptr.2nd 688).

SECTION ACTION AND CONTACTS:

Date of Approval by Family Law Section Executive Committee: April 7, 2006
Approval vote: 12-0

Contact

Diane Wasznicky
Bartholomew & Wasznicky LLP
4740 Folsom Blvd.
Sacramento, CA 95819
Telephone: (916) 455-5200
Fax: (916) 455-6300
Diane@DivorceWithRespect.com

Section Legislative Chair

Elizabeth L. Harrison
451 Main Street, #9
Placerville, CA 95667
Telephone: (530) 621-4700
Fax: (530) 642-2761
elh-family-law@comcast.net

DIGEST:

This legislation would introduce a new section to the Family Code recognizing and dealing with the inherent inequity promoted by the *Lautsbaugh* Decision, which ignored both economic reality and the process by which spousal support is set in most family law cases where there are minor children.

PURPOSE:

1. Current case law prohibits a court's consideration, as a change of circumstances warranting a request for modification of spousal support, the termination of the child support order by operation of law. (*In re Marriage of Lautsbaugh* (1991) 72Cal.App.4th 1131, 85 Cal.Rptr.2nd 688.)

2. The problem with the existing law has been best described by Garrett Dailey:

Spousal support is totally captive of the child support calculation. Spousal support is calculated from the money left over after child support is "paid" but before it is "received." Because of the increased amounts of child support mandated by Family Code §4055, in most cases the paying spouse has insufficient remaining income to pay the supported spouse what would otherwise be an appropriate amount of spousal support based upon the parties' circumstances without regard to the children. (Family Code §4320.) Thus, the spousal support award that is made is not a reflection of the supported spouse's need nor the paying spouse's ability to pay, both measured independently from the children. It is simply an equitable division of the income remaining after the child support is calculated.

Furthermore, when the child support terminates, the supported spouse may still have the same mortgage payment, property taxes, insurance, car payment, etc. Many of the fixed expenses continue, whether the children are present or not.

A fairer way to deal with this problem would be for the trial court to make findings as to what a reasonable spousal support order would be were there no children of the marriage. That way, when child support terminates, the supported spouse would have a basis for returning to court for a fair support order based solely on his or her needs. Of course, if the circumstances other than the child support terminating have changed, so too could the resulting spousal support order. But at least it would be based on reality, not fiction.

3. This proposed statute would overrule the rule of law announced in *Lautsbaugh* and allow trial court judges ample discretion.

ILLUSTRATIONS: Currently, child support calculations are calculated utilizing mandatory statewide guidelines. Because spousal support calculations are not made until after child support has been determined, two identical families; one with children and one without children, would have widely varying spousal support orders, as the family without children would have no child support deductions made before calculation of spousal support. This legislation would allow the court to ignore the holding in *Lautsbaugh*, which prevented the court from treating the termination of child support by operation of law as a change of circumstance.

DOCUMENTATION: None.

HISTORY: No similar bill has been introduced in this session or during previous legislative sessions.

PENDING LITIGATION: None known.

LIKELY SUPPORT & OPPOSITION:

Support: Family Law Section Executive Committee.

Oppose: Those payors who might potentially otherwise have to pay more spousal support.

FISCAL IMPACT: None.

GERMANENESS: Issues pertaining to spousal and child support are within the expertise of the members of the Executive Committee of the Family Law Section.

TEXT OF PROPOSAL

SECTION 1. Section 4326 is added to the Family Code, to read:

4326. In any proceeding where a spousal support order exists or for which the court has retained jurisdiction thereof, and there exists a companion child support order, the termination of child support pursuant to subdivision (a) of Section 3901 shall constitute a change of circumstances that may justify a request for modification of spousal support.